IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-544

STATE OF LOUISIANA, in the interest of
RUSSELL GIANGROSSO, LONNIE GROS, and SCOTT HOOD

RUSSELL GIANGROSSO, et al.,
Petitioners,

versus

THE STATE OF LOUISIANA,
Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of the State of Louisiana

OPPOSITION TO MOTION TO FILE BRIEF OF AMICUS CURIAE and BRIEF OF THE STATE OF LOUISIANA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPPOSITION TO MOTION OF STATE PUBLIC DEFENDER OF CALIFORNIA TO FILE BRIEF AMICUS CURIAE

The State of Louisiana opposes the Motion of Quin Denvir, State Public Defender of California, for permission to file an *amicus curiae* brief in the above captioned case. The reasons for the opposition are as follows:

1. The proposed amicus brief relies on and incorporates by attachment, material which is not part of the record in this case. The attempt by the State Public Defender of California to prejudice the Court by bringing inadmissible (under Louisiana law) and unadmitted

material before this Court should receive short shrift. The proposed brief relies on this unadmitted material for much of its argument.

2. A cursory reading of the proposed *amicus* brief demonstrates that the *amicus* has no distinct interest beyond that of the parties in this litigation. The brief is no different from that which might have been submitted on behalf of the petitioners as party to this litigation. Request for *amicus* status through an attempt by the California Public Defenders to assimilate their position to the "petitioners" is a transparent call for multiple briefing on behalf of one party as a tactical advantage, rather than as a service to the Court in the tradition of true *amici curiae*.

Wherefore, the request by the State Public Defender of California for *amicus status* should be denied.

Respectfully submitted,

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BRIEF OF THE STATE OF LOUISIANA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

STATEMENT OF QUESTION PRESENTED

Whether a jury trial is among the essentials of due process and fair treatment required during juvenile adjudicatory proceedings.

STATEMENT OF THE CASE

On October 8, 1977, three white boys (minors) allegedly raped two white girls (minors) and attempted the rape of a third white girl (also a minor) on a levee in Point Houmas, Louisiana. No trial has been held as yet and the defendant minors are at liberty on bail, in the custody of their parents.

Petitioners sought to have a trial by jury. Inasmuch as the Judge of the Parish Court denied this motion, appeal was taken to and denied by the Court of Appeal, 1st Circuit, State of Louisiana. The Supreme Court of the State of Louisiana also denied applications for review of the defendants' motion for jury trial.

SUMMARY OF ARGUMENT

Louisiana Revised Statutes 13:1579 provides that all cases of children shall be heard separately from the trial of cases against adults and shall be tried without a jury. This statute does not present any conflict with Federal Constitutional Right or Jurisprudence. There is no denial of fundamental fairness or due process in such a statute.

ARGUMENT

I. Supreme Court of the United States Revised Rules, Rule 19 Precludes Review of State Law Not In Conflict with Federal Law or Posing a Federal Question.

II. There is no Federal Constitutional Requirement that Jury Trial be held in Juvenile Matter.

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. Sect. 1257(3). However, this case does not, as is required by that Section, necessarily call for review of the constitutionality of the Louisiana Statute 13:1579. There is no Federal constitutional requirement that trials of juveniles be held with a jury. The State of Louisiana Statute is well within the accepted and usual course of judicial proceedings in regard to trial of juveniles. *McKeiver v. Pennsylvania*, 403 U.S. 528, 29 L.Ed.2d 647, 91 S.Ct. 1976 (1971).

III. Trial of Juvenile Matters Before Experienced Judges Provide Fundamentally Fair Procedure.

IV. Fundamental Fairness does not Require Use of Jury As a Fact Finder.

As this Court's decisions in *Kent*, *Gault* and *Winship* make clear, a mere refusal to equate juvenile court proceedings with criminal prosecutions does not mean that youths charged with felonies are not guaranteed substantial constitutional protection. Rather, as each of this Court's decisions in the area has made clear, the

due process clause of the Fourteenth Amendment requires that juvenile court procedures must grant a youth a trial which, if it does not follow all of the forms of the criminal process, nevertheless is as fair and as accurate in its determinations as the criminal process. The latest formulation of this Court's attitude was stated in *McKeiver v. Pennsylvania, supra,* to the effect that: (1) the fact that the due process clause of the Fourteenth Amendment imposed the Sixth Amendment right to jury trial upon the states in certain "criminal prosecutions" did not automatically require jury trial in state juvenile delinquency proceedings, the claimed right to jury trial instead depending upon ascertaining the precise impact of the due process requirement on delinquency proceedings, (2) the applicable due process standard was fundamental fairness, and (3) notwithstanding the disappointments and failures with regard to state juvenile court procedure and its idealistic hopes relating to rehabilitation, nevertheless trial by jury in the juvenile court's adjudicative stage was not a constitutional requirement, particularly since requiring jury trial might remake the juvenile proceeding into a fully adversary process, with the attendant delay, formality, and clamor of such process, and would effectively end the juvenile system's idealistic prospect of an intimate, informal protective proceeding.

And if no system dispensing with trial by jury has been attempted in the United States with respect to criminal trials, it is equally clear that the vast majority

of states have constructed such systems in the juvenile realm. Recent review reveals twenty-seven American jurisdictions denied the right to trial by jury in juvenile cases whereas only twelve required it.[1] And since that time, Congress has removed the District of Columbia from the minority and added it to the majority with the passage of the District of Columbia Court Reform and Criminal Procedure Act of 1970, P. L. 91-358, 84 Stat. 473 (July 29, 1970). This Act replaced Section 16-2307 of the D.C. Code, which provided for trial by jury in juvenile cases with a new Section 16-2316, which specifically requires trial by the court alone. Typically, the pertinent Louisiana Statute (R.S. 13:1579) provides: "All cases of children shall be heard separately from the trial of cases against adults and shall be tried without a jury . . .". The judgment of twenty-eight legislative bodies, including the Congress of the United States, that fairness in juvenile proceedings does not require trial by jury deserves the respect of this Court.

Nor has a single appellate court anywhere in the United States held that the federal constitution requires the granting of jury trials at juvenile delinquency hearings under a statutory scheme in any way resembling that set forth by the Louisiana Statute.

Most States do not provide jury trial for juveniles. Even Illinois, New York and California, which have recently revised their juvenile court laws to increase

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1 The statutes are cited in Note, A Due Process Dilemma, Juries for Juveniles, 45 N.D.L. Rev. 251, 258, nn. 48-49 (1969).

procedural safeguards for the child, have not extended the right to trial by jury. In fact, of some fourteen jurisdictions in which appellate courts faced the question of the requirement of jury trial in juvenile cases, only the Supreme Court of New Mexico in *Peyton v. Nord*, 78 N.M. 717, 437 P.2d 716 (1968) has held that jury trials were required and the basis of the New Mexico decision was not the federal Constitution but provisions of the New Mexico Constitution and statutes totally inapplicable to this case.[2]

One of the most comprehensive opinions discussing the question is found in *In re Johnson*, 255 A.2d 419 (Md. 1969), wherein the Court of Appeals of Maryland discussed the entire question of the applicability of jury trials to juvenile cases. Although counsel for petitioner relied upon *Duncan*, see 255 A.2d at 421, the Court refused to apply the *Duncan* rationale to juvenile cases, noting that the *Gault* decision did not hold that all the criminal procedures labelled "due process rights" need be applied to juveniles. Rather the Court held, a juvenile is guaranteed only those rights required in

2 The only two federal cases which have even peripherally adverted to the right to jury trial in the light of *Gault* are of no help in solving the question. In *Nieves v. United States*, 280 F. Supp. 994 (S.D.N.Y. 1968), the court decided that such a right existed under the federal Juvenile Delinquency Act because that Act did not provide that juveniles were automatically free from criminal prosecution but, instead, normally gave the juvenile the choice between prosecution as an adult and adjudication as a juvenile. The result of the peculiar federal scheme, accordingly, was, the court held, to force the juvenile defendant to waive his right to jury trial in order to obtain other benefits. This scheme is, of course, unconstitutional. Compare *United States v. Jackson*, 390 U.S. 570 (1968).

criminal trials whose existence was necessary to provide for a fair hearing in juvenile courts. Moreover, the Court equated juvenile hearings with trials in equity wherein a jury has never been the finder of fact. Based on this reasoning and a study of the earlier decisions, the Court concluded unanimously that jury trial was not required in juvenile cases.

Similarly, the Supreme Court of Ohio in *In re Agler*, 19 Ohio St. 2d 70, 249 N.E.2d 808 (1969), refused to require jury trial in juvenile cases, again looking to equity jurisdiction as the touchstone by which the fairness of trials without juries should be judged. The Court held (249 N.E.2d at 814):

> "Furthermore, we can percieve no benefit worthy of destroying a juvenile's traditional entitlement to special status which might accrue to an alleged delinquent from a jury trial. Unquestionably, fair adjudication can be had for a child represented by counsel, from a judge applying proper rules of evidence and a proper standard of proof. There exists a right of appeal to remedy error and reviewing courts may exercise vigilance over arbitrary determinations of delinquency."

Moreover, the Court declined to require indictment in delinquency proceedings, appropriately declining "to label delinquency a capital or otherwise infamous crime" which would require indictment or jury trial. Just as the Court in *Gault* had criticized labeling delinquency proceedings "civil" and thereby avoiding all need to provide constitutional protections, the Court in

Agler noted that no purpose was served by simply treating juvenile proceedings as "criminal." In fact, the whole purpose of the juvenile proceeding was to avoid many of the attributes of criminal trial.

Yet again, the Supreme Court of Oregon in *State v. Turner*, 88 Ore. Adv. Sh. 363, 453 P.2d 910 (1969), refused to apply *Duncan* to juvenile cases (453 P.2d at 913-14):

> "Regardless of the veneration in which Anglo-American law rightly holds the jury as an instrument of criminal justice, it must be remembered that crime and punishment are not the primary business of the juvenile court. There is reason to question whether a jury trial is the most trustworthy instrumentality for protecting the rights of the child, his parents, and the state in a proceeding intended to salvage a child, if he is in need of governmental control.
>
> One of the principal reasons for retaining trial by jury in the administration of criminal justice has been the desire of American society to mitigate the letter of the criminal law. When the question is 'guilt' or 'innocence,' the people feel more secure in their confrontations with the government when a jury is present. The jury brings to its work in a criminal case a combination of sentiment and common sense. Frequently, the jury views the state with healthy skepticism, and

> tempers justice with subjective values for which no provision had been made in any statute. As Mr. Justice Holmes observed in Horning v. District of Columbia, 254 U.S. 135, 138, 41 S.Ct. 53, 54, 65 L.Ed. 185 (1920), '* * * the jury has the power to bring in a verdict in the teeth of both law and facts.' The ad hoc legislative contribution of the jury system to the criminal law might enhance an occasional case involving the wardship of a child. But it is not certain that broad generalizations equating adult and juvenile cases are justified. If a fact-finding process before the judge is conducted in a fair and trustworthy manner without a jury, it is arguable whether the clash and clamor of a jury trial would enhance the rehabilitation of a child. See e.g., discussion in Dryden v. Commonwealth, supra, and In re Estes, supra.
>
> We recognize the distinction between the adjudicative phase of a juvenile case and the dispositional phase. We are also aware that it is possible to utilize the jury in the first phase and to exclude it from the second. There is reason to believe, however, that, at least in cases of first offenders and of other children who have not yet embarked upon a criminal career, the adjudicative phase of their court experience presents an important rehabilitative opportunity. See Note, Rights and Rehabilitation in the Juvenile Courts, 67

Colum.L.Rev. 281, 283, 289, 321, 325 (1967) (internal evidence indicates, however, that this article was written before the Court published its decision in *Gault*).

The imponderable question, of course, is whether there is any substantial danger that a child brought before a court without a jury would be found 'in need of wardship' when in fact he had not committed the act charged. The concomitant question is whether the presence of the jury in the case would contribute a sufficiently substantial reduction in the margin of error to outweigh the possible harm to the child from participation in the drama of a criminal trial.

During the evolution of separate courts for juveniles the nation's legislative bodies considered all the arguments for and against jury trials in such cases. The possible danger of 'convicting the innocent' undoubtedly weighed heavily in legislative deliberations. Unfortunately, however, no objective data have been found to answer the question whether such a danger exists. A dozen of the states and the District of Columbia have elected to provide jury trials for children. See Note, A Due Process Dilemma — Juries for Juveniles, 45 N. Dak. L. Rev. 251, 258 (1969). The majority of the states have decided that jury trials in juvenile cases would do more harm than

good. While virtually all these legislative decision antedated *Gault*, the legislators must have believed that the danger of a miscarriage of justice in the absence of a jury was remote."

THIS SAME ANALYSIS IS EQUALLY APPLICABLE TO THE LOUISIANA STATUTE.

V. The Most Careful Commentators have Concluded that Trial by Jury would Detract, Rather than Add to the Fairness of Juvenile Proceedings.

In the Task Force Report: "Juvenile Delinquency and Youth Crime", p. 38, The President's Commission on Law Enforcement and Administration of Justice enlarged upon the report set forth in "The Challenge of Crime in a Free Society", and stated as to jury trials:

> Most States do not provide jury trial for juveniles. Even Illinois, New York, and California, which have recently revised their juvenile court laws to increase procedural safeguards for the child, have not extended the right to trial by jury. There is much to support the implicit judgment by these States that trial by jury is not crucial to a system of juvenile justice. As this report has suggested, the standard should be what elements of procedural protection are essential for achieving justice for the child without unduly impairing the juvenile court's distinctive values.

As has been observed, "A jury trial would inevitably bring a good deal more formality to the juvenile court without giving the youngster a demonstrably better fact-finding process than trial before a judge." The presence of a jury tends in a number of ways to contribute to an atmosphere of formality. In part, formality becomes itself an end insofar as it helps instill in jurors a sense of the seriousness and solemnity of their duties. Moreover, the presence of a jury affects the whole process dealing with evidence. Much of the reason for many restrictive rules of evidence, which typically give rise to narrow contentiousness over marginal issues, stems from the felt need to protect against a jury's susceptability to prejudice and irrelevancies and its limited ability to distinguish between the more and less probative. And when a jury is the object of an attorney's persuasion, he naturally responds to what he believes will most affect it, with the usual result an emphasis on staging, effect, and emotion rather than a more businesslike presentation.

A further consideration arguing against a jury arises out of the typically loose and general statutory formulations of the behavior that may subject a youth to juvenile court jurisdiction, particularly insofar as the conduct includes acts other than those that

would be criminal if engaged in by adults: *i.e.*, incorrigibility, need for care and supervision, truancy. Inequality and disparate decisions are invited by giving these formulae to *ad hoc* juries for application rather than to judges, who tend inevitably to develop concrete meanings for such terms. If a jury were required, the appropriate standard of proof (beyond a reasonable doubt, preponderance of the evidence, and so forth) would become a more critical issue.

As Mr. Justice Cardozo noted, it would not appear that a fair and enlightened system of justice is impossible without jury trials. "This too might be lost, and justice still be done."

CONCLUSION

For the foregoing reasons, it is respectfully requested that the order of the court below be affirmed and the petitioners' application for Writ of Certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Abbott J. Reeves, the undersigned attorney, hereby certify that I have this day mailed three copies of the above and foregoing Brief in Opposition to a Petition for a Writ of Certiorari to Benjamin C. Vega, Jr., Esq., P. O. Box 775, Donaldsonville, Louisiana 70346 and to Alan J. Robert, Esq., 116 East Railroad Avenue, Gonzales, Louisiana 70737, attorneys for petitioners, by placing same in United States Post Office, first class, postage prepaid, said service being made in compliance with United States Supreme Court Rule 33(1).

Gretna, Louisiana.
This ____ day of
_____, 1979

Abbott J. Reeves